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JAN 21 2021 *AB*

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:21-cv-34-D

REINALDO OLAVARRIA
Plaintiff

v.

Complaint
(Jury Trial Requested)

Wake County Board of Education,
Cathrine Trudell, Jennifer Rothaar,
Jennifer Palmer, Emily Mae Bishop,
Jacqueline Cunningham, Marsie Rabii,
Heather Cooke, and Jerryean Daniels (all
in their official capacities)

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3

4

Jurisdiction

5 Jurisdiction¹ is based on the right of a parent² to file independently regarding a claim of
6 IDEA.¹ Jurisdiction is based on violations of the Civil Rights Act. Jurisdiction is based on
7 violations of the Americans with Disabilities Act. Jurisdiction is based on violations of Due
8 Process. Jurisdiction is based on violations of the 504 Rehabilitation Act. Jurisdiction is based on
9 defendants acting under the color of law to deny the constitutional rights of Reinaldo Olavarria, in
10

I. ¹ **Winkelman v. Parma City School Dist., 550 U.S. 516 (2007)**

² <https://www.casemine.com/judgement/us/5914b421add7b0493476a649>

11 their official capacity. Jurisdiction is based on unequal protection under the constitution and
12 violations by defendant of constitutional rights.

13
14
15

Background Information

16 Out of a legal marriage in the State of North Carolina, by two citizens, including Reinaldo
17 Olavarria [a dual US Citizen and citizen of Puerto Rico] were born two minor children ERO and
18 ABO. Both parent and children continuously resided in the State of North Carolina since the
19 marriage in 2004 and subsequent births of children, biological children of Reinaldo Olavarria.

20

21 Shortly after birth, both children were identified by their treating primary care physician,
22 the late Dr. Frederick Douglas Burroughs³, as exhibiting developmental delays. As a result,
23 parents took the children for evaluations by the North Carolina Department of Health and Human
24 Services department of early intervention and both were accepted into their intervention programs
25 due to developmental delays [more readily expressed in speech impediments]. Services through
26 this state agency continued through their pre-school years, and most extensively the services were
27 for speech delays and stuttering (speech impediments, SI).

28

29 One child, through pre-school and school based services, overcame their disability. The
30 other child, ERO, in the formalized school setting, needed continued services, services that
31 continue until this day.

32

³ [Obituary for Dr. Frederick Douglas Burroughs | Haywood Funeral Home \(haywoodfh.com\)](http://www.haywoodfh.com)

33 Difficulties were experienced with the transition to the school environment, by the parents,
34 for securing appropriate services for ERO. Due to his age and needs, ERO was identified and
35 participated in Pre-School at Carver Elementary School (CES) in Wake County North Carolina
36 through the Wake County Public School System (WCPSS). Herein began the problem, because,
37 additional assessments and evaluations revealed the beginnings of symptoms of SLD (Specific
38 Learning Disability), ADD (attention deficit disorder), in addition to the previously diagnosed
39 speech developmental disorder.

40

41 ERO did not thrive in the pre-school environment and evidenced the symptoms of the
42 disabilities aforementioned [SI, SLD, ADD]. Notations here is the parents did not fail to secure
43 placement in pre-school due to his disability and previous identification by the State of North
44 Carolina. Immediately, parents advocated a higher level of services that could best be delivered
45 in the special education environment, upon continued presence and attendance at CES until May
46 2019. The pleas and request were not properly responded too. ERO should have been placed in
47 special education when he entered kindergarten; it was seen by his parents that "Interventions"
48 were not sufficient in kindergarten. However, WCPSS refused placement, and, its policy to justify
49 such was based on the use of IQ levels and testing that the United States Congress on or about
50 2004 and 2006 recommended against when passing IDEA legislation, as seen in the federal register
51 of the United States.

52

53 Consistently, parents advocated a higher level of services that could only be delivered in
54 Special Education from the kindergarten placement, the year and months ending completion of
55 such, ending kindergarten, did not result in placement. However, WPCSS denied placement until

56 about the 4th grade at CES. The initial placement in special education was through an ADD
57 diagnosis, then after many appeals and hearings and agreements, WCPSS finally acknowledged
58 their policies and practices were wrong and resulted in the delay in placement in special education
59 for several years. On 5/17/2018, he was finally placed properly and finally identified as an SLD
60 student in Special Education. Again, that resulted, due to WCPSS and CES and the acts of
61 Katherine Faison in particular, acts of Elizabeth Barrett, acts of Brenda Melvin, acts of Ashlee
62 Taylor, acts of Rossi Volley, and acts of Jacqueline Cunningham in a detrimental delay in the
63 delivery of services that even caused the improper retention of ERO by one grade at CES.

64

65 On 03/07/2017, ERO was evaluated by Dr. James Poole and ADD was officially
66 determined. However, SLD was persistent all through CES attendance, and, it was through SLD
67 that the parents requested special education services since Kindergarten, and would have averted
68 the retention in 2nd grade.

69

70 In the IDEA appeals process, the parents had a resolution meeting, prior to 2018, with
71 Jacqueline Cunningham. Through that process, and with the ACTS of lawyers from the
72 Tharrington Law Firm, multiple breaches of confidentiality of protected health information and
73 school records did occur at the hands of lawyers from Tharrington and Jacqueline. That included
74 the denial of access to official school records. The Wake County Board of Education and WCPSS
75 was immediately and timely informed of such; and a request of recusal of Tharrington due to their
76 breach and acts was properly submitted. Again, it was Jacqueline Cunningham that was the
77 principal policy maker and enforcer and director that was directly responsible for using anti-IDEA
78 (Individuals with Disabilities Education Act) policies and procedure and principal actor that

79 caused multiple breaches of confidentiality. These were additional barriers and acts that caused
80 the delay and non-delivery of services to meet ERO's needs. It evidenced a deliberate indifference
81 by WCPSS in their service delivery model, policy and practices, and overall attitudes against
82 ensuring minority children receive the special education services they need. Way pass 2006, they
83 kept using an IQ model that was clearly against IDEA, and in 2017 and 2018 stated, yes, we will
84 be training staff in the next two years on the proper IDEA eligibility determination standards; for
85 over 10 years, their policies did not reflect the intent of congress, deliberately, knowing that the
86 population that suffered the most from those acts were minority special education students.

87

88 The last year and month at CES included a discussion and multiple requests for services to
89 "make up" for the years ERO was denied a Free and Appropriate Education and IDEA services
90 and services under 504 and the Americans with Disabilities Act. That included the requests for
91 extended school days, extended school years, and compensatory services. Since May 2019, all
92 services were denied and/or not delivered in a timely manner. Deliberate indifference continues
93 on the part of WCPSS. Again, since entry to WCPSS and CES, IDEA services and other needed
94 services were denied due to deliberate indifference most evidenced by using anti-IDEA policies
95 and procedures in their service eligibility and delivery model. Justice delayed is justice denied,
96 As a parent, I personally have been involved all throughout WCPSS attendance in the request,
97 determinations, and eligibility process for services. The result was due process denials and delays.
98 The results were the unequal treatment of my child to include when his best friend was advanced
99 in a special program while my child was retained. ERO is more than 2 years (grade levels) behind
100 in academic achievement due to deliberate indifference on the part of the WCPSS/defendants.

101

102 The 2019 school year ended with ESY (extended school year) being granted, but due to
103 school policies and procedures, ERO was subjected to being placed in a learning environment
104 along with MR (mentally retarded) and severe DD (developmentally delayed). students, profoundly
105 disabled individuals. This reminded me of placement in Junior High School when I was
106 erroneously placed with what we termed the “head bangers”. WCPSS policy, as expressed by
107 Barrett and Melvin, espouses the concept of 1 special education teacher to 5 students. However,
108 all students are at different levels. Hence, as ERO described it in CES, “I never get any help
109 because the others are moving all around and cannot sit still”. Imagine if you will, being placed
110 in a room with persons whom are learning how to use a spoon and learning the letters of the
111 alphabet, versus, you, needing help with 4th and 5th grade math and writing. That is WCPSS
112 deliberate indifference. That was after appeals just to get ESY, and turns out it was only productive
113 on the last two days of three weeks, and admitted to such by special education teaching staff.

114

Current Acts/Cause of Action

116

117 Middle school was and is a continuation of the plight experience since entry into the public
118 school system. It began with a call for a special meeting to discuss extended school days and the
119 possibility of advancing ERO to the grade he needed to be in according to age. Procedural due
120 process ensures that requests for help are properly reacted to in a timely manner. Not so herein,
121 we asked for a meeting in the beginning of the school year. It was not responded to. Finally, after
122 much parental action, it finally got scheduled for three months, approximately, after the request
123 was made and properly submitted to middle school administration. However, the horror is sitting
124 in a meeting, and school staff, deliberately and with intent, covering their inaction by labeling the

125 late response to a meeting request as “we are performing an annual review, in December [not
126 March, April, or May according to our annual review schedule, we met already annually for years
127 on that schedule]; Due process failure. Then, the animosity expressed when an appeal and
128 objections were filed to that meeting, (December 2019), that led to a meeting to resolve the issues,
129 and we signed a resolution contract on January 31, 2020. However, the terms of such have since
130 such time not been adhered to by WCPSS and the middle school administrative and special
131 education staff. C. Trudell and the chief special education present, Jennifer Rothaar, led the acts
132 of deliberately falsifying school records [making the December meeting an “Annual Meeting”].
133 Defendants include Jennifer Palmer, Emily Mae Bishop, Jacqueline Cunningham, Marsie Rabii,
134 Heather Cooke, and Jerryeen Daniels; all of these defendants have participated in the deprivation
135 of due process and other rights aforementioned. These individuals comprised the IEP team and
136 LEA and policy high ranking policy officials.

137

138 2020, since its onset and change to the middle school environment, has been marked by
139 the outright failure to provided requested special education services. That includes the refusal to
140 hold ERO to the same academic standards as his peers. IDEA specifically details that student are
141 to be held to the same academic standards of their peers. The 2019 middle school year began with
142 a quest for compensatory and services to “bring him to grade level”, because, prior to middle
143 school entry, WCPSS failed to provide him the services he need to help him function at or above
144 grade level.

145

146 A pandemic interrupted the normal service provision, but, for special education students in
147 the private sector, many students did not “skip a beat”. They have been attending school since the

148 onset of the pandemic. They have been getting special education services through IDEA without
149 any interruption. Some may see this as a political disaster and lack of leadership in the public
150 sector. The end result is even in the virtual environment, many services were requested, like
151 extended school days, virtually, and providing virtual hands on instruction to “keep him engaged”
152 were not provided. ERO was and is left on his own.

153

154 IEP goals were disregarded at the beckoning of special education and regular education
155 staff. We had managed in March 2020, to get “extra assignments assigned” for ERO to make up
156 and catch up to grade level; however, teaching staff told him, well, those assignments are optional,
157 you do not need to do them. No read out loud. No additional work to build his vocabulary and
158 writing skills. And, this current term includes not even being able to get extended time to complete
159 assignments.

160

161 The current school year is marked by inconsistent instruction time and schedules. No
162 substitute teachers. Most of the IEP goals and services have been disregarded. Basically, the
163 resolution agreement from January 2020 is not being adhered to in any meaningful manner. We
164 requested additional testing and assessments, and, not have been properly responded to. Some,
165 many, say the “democratic governor democratic school board” [is at fault], but when
166 coupled with deliberating accepting school funds for special education, then slashing to budget, as
167 in Thom Tillas, then you have evidence mounting of deliberate indifference. Special education
168 had teaching assistants in the classroom and special education teachers in the classroom as push in
169 services, then curriculum assistance was outside of the classroom to help “bridge the gap”. Doing
170 assignments for him is not the same as helping him do the assignment and adhere to grade level

171 standards [WCPSS staff is doing such for him]. Having him take exams on the same schedule as
172 regular students without additional test taking time, and, in nowhere can it be found that any of
173 those tests and quizzes are being read aloud to him. No additional work to bridge the gap in
174 education; instead, he is further behind academically, all in violation of our agreement and IDEA
175 standards.

176

177 December 2020 even reached new lows for the administration. The star of an IEP meeting
178 was not even invited to the meeting (ERO). I remember the courts legal standards when I was in
179 foster care [a foster care worker], at the age of 12, children had to be asked and invited to determine
180 what they wanted [live with your mom, dad, etc]. I attended every special education meeting, and
181 was invited to all of them, when I was in special education due to my disability. However, WCPSS
182 actions and policy went even further. They had a meeting wherein they did not even send mailed
183 invitation notices, and sent one to the wrong address, an address she had not used for over five
184 years, of my exwife. ERO, no invitation (sending it to the wrong address is like not sending it at
185 all). They set the time without consultation of the family. They called the meeting an annual
186 meeting, when clearly it was not an annual meeting. Heck, they did not even sent copies of the
187 ECATS, one governing documents during IEP meetings. Then after all that, he, ERO gets a notice
188 that he is facing retention, but, that is because the middle school is not providing the services we
189 agree to. They violated and continue to violate procedural due process and IDEA standards.

190

191 As a parent, I am not a sloth whom is not vested and interested and has done nothing for
192 my son. I fought hard and channeled my energy to avail and use procedural due process. However,
193 the school and the system (WCPSS) is adamant about not providing services as outlined in IDEA

194 and other governing disability laws. I grieve each time I try to secure services for my young adult.
195 It hurts me personally to see him struggle, be frustrated, and act out in anger. I am in the zone of
196 danger and have been personally affected. Years of hurt and heart ache I have suffered along with
197 my child. ADA, 504, IDEA, and all the disability laws all have provisions to sue, by a parent,
198 when the system fails the parent and the child. Years being excluded from Special Education
199 compounded by the placement therein with the failure to provide needed services to make up for
200 their mistakes (WCPSS).

201

202 If you deliberately hire special education policy makers whom only have a book knowledge
203 of special education, and, deliberately use outdated criteria, and, unequally provide services as in
204 white male students and white female will get services according to need rather than the minority
205 child, then that is the substance of unequal education and discrimination. It is also due process
206 violations. I remember one meeting wherein C. Trudell stated although he failed EOGs (end of
207 grade exams) we have other data to show he is doing well and we report that to our superiors. I
208 asked for and never received those reports. Hum. It is well documented that there are disparities
209 in service delivery in special education, that need not be litigated because it is widely known, but,
210 it is the substance of the explanation as to why this child is not receiving the services he needs; he
211 is a black male of mixed heritage.

212

213 My actions and attempts to secure services are detailed and extensive. That includes
214 reaching out to State Department of Public Instruction Leaders and the board of the board of
215 education and district leaders like super intendants. The letters, calls, emails and meetings are
216 numerous.

217

218 I sue because I have been injured along with my child. I sue because due process has been
219 denied. I sue because of the civil rights violation and unequal protection. I sue because the lack
220 of a free and appropriate education. I sue because my son has been discriminated against due to
221 his disability, and I have been injured due to that action. I sue because I tried all I could to secure
222 the disability services he needs through IDEA, but, due to deliberate indifference, defendants and
223 the board of education just denied the services, continuously, Some of defendant acts are criminal
224 and/or against state and federal law, as herein shown.

225

226 The lack of multiculturalism is one attributing factor. WCPSS does not ensure its staff is
227 diverse. I remember the last year at CES and applying for an assistant principal job there. In my
228 mind, I said, they will surely give me the positions. I asked C. Trudell if she ever saw a person in
229 a wheelchair teaching or be an administrator in all the time, her 20 plus career, and she said she
230 only saw one, years ago, and that person became disabled while on the job. Discrimination in
231 hiring practices by WCPSS has fermented and solidified into an “anti-disability” environment.
232 You lack staff to guide the development of policies to combat “book and educational” knowledge
233 of disability versus personal experiences to combat unjust and improper treatment of the disabled.
234 I consistently asked middle school staff if they talked with or consulted with ERO about his needs,
235 and the answer is “no”. Deliberate indifference with the added cements of “if you are handicapped
236 you cannot work here” [employment discrimination]. A person with lesser experience was hired
237 at CES, than me, and the school system continues discrimination based on disability. I remember
238 him saying everyone is scared of you [the lack of exposure to persons with disabilities] as being a
239 deliberate effect of discriminatory hiring practices.

240

241 Over 10 years I entered the halls and premises of CES. Not once did I find a disabled
242 employee working there, at hire. Over 10 years of advocating for a disabled child and not being
243 able to get services; how many parents can say they have a middle school student that has the
244 academic achievement of a elementary school student, every as a parent you tried everything you
245 could? My app garden account just expired this month. App garden is what I consider to be
246 WCPSS version of a poll tax. That account is to get certification in the policies of WCPSS,
247 without being offered an employment position. I could understand if part of a new hire policy you
248 had to learn school policy; but, WCPSS adds a barrier to disenfranchised minorities to get
249 certification in a specific policy in order to be hired for positions like substitute teacher, and
250 economy and discriminatory policy. It is not like in New York, wherein you apply for an
251 occasional per diem license, that just required you present copies of your college transcripts to be
252 able to teach in New York City Schools. The deliberate indifference is shown in this charging
253 document. 2020 is the era when the employment discrimination against the disabled is open and
254 flagrant. 2020 is the era wherein it is known that minorities face inequities in the education system.
255 2020 is the era wherein for many minorities free and appropriate education is not possible. 2020
256 is when I had a conversation with a Black neighbor about reverse discrimination wherein Black
257 government employees feel entitled to only hire “their own” just like Whites have for years; the
258 problem is I am not Black or White. Either way, disabled employees are still not present according
259 to their numbers in government positions. Public sector discrimination is also a charge against the
260 defendant(s).

261

262 A jury trial is requested. The ability to proceed in forma paupers is being requested. But,
263 the expectation is answers to this charging document. What is not expected is an answer in the
264 form of just a motion to dismiss; and, a judge just ruling without a hearing on the merits and
265 allegations in this document.

266 Relief Sought

267 A judgement in favor of Reinaldo Olavarria totaling \$10,000,000.00 (ten million dollars).
268 That to include General Damages, Special Damages, Compensatory Damages, and Punitive
269 Damages.

270 A trial of this matter by Jury.

271 Any other relief the court can grant in favor of Reinaldo Olavarria

272
273
274 Respectfully Submitted by

Reinaldo Olavarria 
Valid from 12/2020 to 12/2021

275
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YLLABUS					
OCTOBER	V.	PARMA	TERM,	CITY	2006 DIST.
WINKELMAN				SCHOOL	
SUPREME	COURT	OF	THE	UNITED	STATES

WINKELMAN, a minor, by and through his parents and legal guardians, WINKELMAN
et ux., et al. v. PARMA CITY SCHOOL DISTRICT